Advocate of Peace

VOL. 82 AUGUST, 1920 NUMBER 8

ADVOCATE OF PEACE

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Published since 1834 by
THE AMERICAN PEACE SOCIETY
(1815-1828)
Suite 612-614 Colorado Building, Washington, D. C.
(Cable Address, "Ampax, Washington")
PUBLISHED MONTHLY, EXCEPT SEPTEMBER

Sent free to all members of the American Peace Society. Separate Subscription Price, $1.50 a year. Single copies, twenty cents each.

Entered as Second-Class Matter, June 1, 1911, at the Post-Office at Washington, D.C., under the act of July 16, 1894. Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 3, 1917, authorized August 10, 1918.

It being impracticable to express in these columns the divergent views of the thousands of members of the American Peace Society, full responsibility for the utterances of this magazine is assumed by the Editor.

OUR INTERNATIONAL POLICY ON THE WAY

IT IS a fact not without interest that the United States, though not a member of the League of Nations, is having a dominating influence in the formation of a most significant world policy. This nation, thought so seriously to have damaged the idea of a League of Nations, is in the interesting position of witnessing its own viewpoint and experience dominating in a most vital manner the international plans for a governed world.

The Council of the League of Nations at its meeting in London, February 13, 1920, decided to go about the establishment, under Article 14 of the Covenant, of an International Court of Justice. The Council invited ten men of international eminence to form a Commission to perfect plans for the organization of such a court. This international committee of jurists began its deliberations at The Hague Peace Palace, June 16, 1920, the Belgian Minister of State, Baron Descamps, presiding. The real labors of this Commission started promptly the next day. Questions involving the principles of law upon which the new court must act, the methods of selecting the judges, the types of cases, matters of jurisdiction, all became subjects for study, discussion, and decision. According to our special correspondent, some of whose material relating to other aspects of the League of Nations appears elsewhere in these columns, all these matters have been adjusted. The High Court of Nations, pleaded for by the American Peace Society for nearly a century, is about to be realized, and this in conformity with the principles familiar and acceptable to every member of the American Peace Society, for the decisions reached by this group of learned jurists at The Hague are strictly consonant with the experience of American history and statesmanship.

That the United States, not a member of the League of Nations, should have a dominating influence in the formation of this permanent court of international justice might be thought to be an anomaly; but our correspondent, reflecting the atmosphere surrounding the Commission, writes to us that the reason is not far to seek. He says that it lies in the personality of two men—Elihu Root, former Secretary of State, and James Brown Scott, former solicitor of our State Department and Secretary of the Carnegie Endowment for International Peace. To their tact and judgment, he writes, is due much of the direction which the whole committee has taken as well as the fact that the court is to be a court wholly in line with American ideals and principles. It appears that these two men hold in the minds of representative jurists abroad a position unique among Americans.

This is true of Mr. Root because of his international utterances while Secretary of State, particularly because of his instructions issued to Mr. Choate and the other American delegates to the Second Hague Conference, May 31, 1907, in which he urged: "A development of The Hague tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility."

Dr. Scott, who sits alongside Mr. Root, is well known in Europe as the foremost commentator on The Hague conferences as well as the editor of many books on international matters. While not formally a member of the Commission, he has been given almost equal rank with the other members and is privileged to sit beside Mr. Root, both as adviser and translator. Our correspondent writes: "No other member of the committee has brought with him a man of the rank of Dr. Scott."

It is by virtue, therefore, of their prestige and merit that these two men, not representing the United States in any official sense, have been chosen from abroad for this great work. These men have been warmly welcomed by the other members of the Commission, first because of friendship and secondly because of their recognized merits and ability in the matter before the Commission. We are told that the Commission had not been sitting a week before it was plain that the court would follow exactly the lines of the Supreme Court of the United States, this in part from the logic of the situation, but particularly from the presentation of the analogy by Mr. Root. Thus the court is to be a court dealing with cases in accord with the principles of law and equity, not merely a court of mediation or arbitration, and that in conformity with the established principles of the Supreme Court of the United States.

We may recall that Mr. Root also said in 1907: "If there could be a tribunal which would pass upon questions between nations with the same impartial and impersonal judgment that the Supreme Court of the United States gives to questions arising between citizens of the different States, . . . there can be no doubt that nations would be much more ready to submit their controversies to its decision than they are now to take the chances of arbitration."

It is a further striking fact that it is American precedent which has enabled the Commission to solve the only outstanding difficulty that made the establishment of such a court impossible at The Hague Conference in 1907. As is well known, it was not then possible to agree upon a satisfactory method of choosing the judges. The great Powers demanded that they always be represented; and the smaller Powers, realizing that they were also sovereign States, demanded their equality. So the plan failed. But that difficulty has now been met and overcome.

The facts in the consummation of this are interesting. The League of Nations exists *de facto* and *de jure*. Whatever its faults, it is at least the outline of an international organization. It seems to be based on the double principle that the Assembly shall be made up of representatives of all the States on an equal footing, and that the Council shall be made up of representatives of the nine most powerful States. It has been thought that if each of these organs could select a panel the Council would protect the interests of the larger States, and the Assembly the interests of the smaller. In such a situation the problem of selecting judges could not be left either to the one or to the other, or, indeed, to both. In the presence of this situation, and in less than three weeks' time, the Commission has been able to outline a complete and satisfactory plan. The hitherto unsolvable conflict between the big Powers and the little Powers has been solved. The court is to consist at the outset of eleven judges and four alternate judges, serving for a term of nine years. It is to sit permanently at The Hague. Its purpose will be to decide all cases arising as between nations under law and equity. It is not to take the place of, but to form a complement to, the existing Court of Arbitral Justice. Each will retain its functions of dealing with all cases of international arbitration.

The first step in the selection of the judges is a matter of nomination. It has been decided to intrust this original nomination to the permanent Court of Arbitral Justice existing at The Hague since 1899. By this means it is thought that only men of the highest judicial character will be nominated. Furthermore, it will not be necessary under such plan for any government to commit itself before the actual time of decision. The four jurists of each nation, now a part of the general panel of the International Court of Arbitration existing through twenty-one years, will be requested to form a national group to select not over six candidates for the panel of the new court, of which candidates not over two may be of their own nationals. This national group of four each will naturally make its selections in consultations with the highest judicial authorities in their respective countries, such as the highest existing national court, the various international law societies, the bar associations, and the like. The result of this would naturally be to provide a long list chosen on the broadest principles. Thus members of the general panel of the court are to be nominated.

Next comes the matter of selection. It is proposed that the list of candidates thus nominated by the established Court of Arbitral Justice shall be submitted to the Council and to the Assembly of the League of Nations. Each body will then proceed by a majority vote to its choice of the necessary number of judges for the International Court. Naturally there will probably be some jurists who will receive a majority of votes, both in the Council and in the Assembly. Such men will be declared selected as judges forthwith. If, however, because of disagreement, the list is not thus completed, each electoral body, knowing more exactly the views of the other body, will then proceed to another ballot. If this does not complete the matter and a deadlock is created, it is proposed that the two electoral bodies shall each appoint a committee of three members to discuss privately with a similar committee from the other body the probable bases of agreement. The final decision may thus be reduced to the mediation of these men, who would be free to agree upon any names, whether on the original list of candidates or not. If, however, the re-

port of such a joint mediation committee fails of acceptance, provision is made that any places remaining vacant shall be filled by the vote of the judges who already have been selected to compose the court. If the Assembly and the Council should not agree to this panel thus selected, the powers of the Assembly and Council shall be considered as defaulted, and the choice as finally made shall stand. Thus, in any event, the selection of the judges is assured.

The plan is felt, therefore, to meet every conceivable difficulty. The original nomination of candidates by a body such as The Hague Court of Arbitral Justice assures the choice not only of the best qualified, but of men truly representative of the various judicial systems of the world. Under the plan of selection as proposed, the court can and will be brought into existence. Even if the League of Nations should cease to be, the court can go on.

Here we have an international policy to which all nations and all parties can subscribe. There is nothing here of coercion of States except that coercion of public opinion, the only sanction of any peaceful settlement of international disputes. True, this is only the judicial branch of the Society of Nations that is to be. True, the political branch must be developed also. The creation of the new laws by duly selected representatives of all the nations, laws which shall be returned to the various powers for ratification, is also necessary. Hence there must be the equivalent of a Third Hague Conference, periodical and permanent. If only the present so-called League of Nations could eliminate those features of it now clearly seen to be wrong, principles contrary to the teachings of history and a menace to the peace of the world, and turn itself into such a general representative body, the machinery of a governed world would then be complete. That would be a League of Nations to which the United States could and would subscribe.

The judicial branch of our governed world must develop *pari passu* with the political branch, for the former will exist to interpret the latter, and the latter must exist for the former. They are essentially complementary to each other, somewhat as our Congress and our Supreme Court are mutually complementary. The function of the League of Nations now is to turn its Assembly, its Council, its Disarmament Commission, its Mandate Commissions, its Health and Labor Commissions, and the rest, into a society of all the nations, meeting regularly and setting up their common agreements for the approval or disapproval of the various authorities back home. Thus there will be no violation of sovereignty, no strain upon common sense. We shall then have that meeting of minds, that common council and association capable of providing those elements of law and order, those rules of action capable of expression, interpretation, and use in accord with the known and accepted principles of judicial settlement.

Thus, and thus only, can we establish the course of a just and peaceful international policy.

AS TO RUSSIA

WE HAVE sinned against Russia—some more than others, but we have sinned. Following the overthrow of the Empire, we wisely and proudly recognized the revolution. Since that time essentially every step taken by the nations outside Russia has been in the wrong direction. We have blockaded her ports; we have furnished arms to her enemies; we have treated her as incapable of solving her own problems. We have misrepresented the facts to her and about her, and the result has been a cumulative disaster. We ignored her at the Peace Conference in Paris. We have treated her as an Ishmael among the nations.

The problem has been a difficult one. It is true that there is no government duly elected by the people in Russia. The so-called Soviet Government is not a government by the consent of the governed; neither is it a government of laws. It is not, therefore, a democracy, but a tyranny. It is not Russian. It is not socialism. It is a class government, worse than Czarism, fed upon hatreds, fanaticisms, and violence.

We have been justified in refusing to recognize such a régime, self-assumed, increasingly bureaucratic and aggressive; but at no time have we been warranted in carrying on an armed intervention in that land.

Russia is having the experience of Britain in the middle of the seventeenth century and of France in the days of The Terror. It would have been well for the men in power outside Russia had they kept more clearly in mind those futile and discreditable policies during the French Revolution, policies shared in by Great Britain, Prussia, Austria, and Russia herself. Our attitude toward Russia should be the attitude of students rather than advocates or enemies. The thing going on there is not new; it is the result of one hundred years of revolutionary agitation, an agitation associated with the names of Robert Owen, Saint Simon, Fourier. The thing going on in Russia has its lessons for all of us. We should study those lessons, for they will be of importance to us as we work out our own problems, especially during the next few years. To combat the movement in Russia by force has strengthened the movement there, not because the thinking and hopeful men of Russia are in sympathy with bolshevism, but because all parties have found it necessary to unite in the name